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10/17/2006

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EXAMINER

MARCETICH, ADAM M

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

11/03/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/587,944	<b>Applicant(s)</b> SUZUKI ET AL.	
	<b>Examiner</b> Adam Marcetich	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 7,10,19,20,24,26-30,32 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,9,11-18,21-23,25,31 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 19 May 2009 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-6, 11-14 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (US 4364992) in view of Bogdanski; Michael Scott et al. (US 5830202).

5. Regarding claim 1, Ito discloses an absorbent article, including:

a leak preventer having a sheet and two bags provided separately on right and left of an upper side of the sheet (col. 3, lines 19-19, 24-30, Figs. 4-7, liquid-impermeable sheet 5 having sheet and two bags on left and right),

each of the two bags are liquid-impermeable and have an opening facing with each other (Figs. 4-7, openings of liquid-impermeable sheet 5 facing each other); and

an absorber having at least one layer and containing a super absorbent polymer and capable of absorbing a body fluid, provided in each of the two bags (col. 4, lines 32-38, Figs. 4-7, second absorbing layer 7 containing super water-absorbing polymer).

Regarding the limitation of an absorber provided in each of two bags, absorbent layer 7 of Ito extends within both sides of sheet 5. Examiner interprets second absorbing layer 7 as located in "each" of the bags, meeting this claim limitation.

Ito discloses the invention substantially as claimed, see above. However, absorbent layer 7 of Ito is a single element, therefore Ito lacks absorbers provided independently as claimed [claim 1]. Bogdanski discloses an absorbent article (col. 6, lines 37-47, Fig. 1, absorbent structure 1), comprising:

a leak preventer having a sheet (col. 6, lines 37-47, cols. 12-13, lines 65-2, Figs. 1, 12, substrate 7) ;and

two bags provided separately on right and left of an upper side of the sheet and absorbers having at least one layer and containing an absorbent polymer and capable of absorbing a body fluid, provided independently in each of the two bags (cols. 12-13, lines 65-2, Fig. 12, doubled over sections 14, 14' holding absorbent particles 9);

Bogdanski holds wetted absorbent material in separate storage zones, away from an acquisition zone (col. 13, lines 2-8, Fig. 12, wetted gel held in storage zones 13, 13' away from acquisition zone 11). One would be motivated to modify Ito with the independently provided absorbers as taught by Bogdanski to restrain wetted absorbent material since gel saturated with moisture may impede the absorption of further wastes, or cause discomfort to a user. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ito as discussed with the independently provided absorbers as taught by Bogdanski in order to restrain wetted absorbent material in storage zones.

Examiner notes that Bogdanski is silent regarding absorbent particles 9 comprising a super absorbent. Examiner cites Ito as teaching a super absorbent material.

6. Regarding claim 2, Ito discloses an absorbent article in which the two bags are symmetrical (Figs. 4-7, liquid- impermeable sheet 5 depicted as symmetrical). Additionally, the storage zones 13, 13' of Bogdanski are depicted as symmetrical (Fig. 12).

7. Regarding claim 3, Ito discloses an absorbent article further including a connecting absorber that connects the absorbers provided in each of the two bags (col. 3, lines 31-35, Figs. 4-7, first absorbing layer 6 adjacent second absorbing layer 7).

8. Regarding claim 4, Ito discloses an absorbent article in which the absorbers are sheet absorbers (Figs. 4-7, first and second absorbing layers 6 and 7 formed as sheets).

9. Regarding claim 5, Ito discloses an absorbent article in which the sheet absorbers contain 50 wt% or more of the super absorbent polymer:

SAP basis weight = 20-100 g/m<sup>2</sup> (col. 4, lines 63-65, SAP scattered on fluff pulp)

Fiber basis weight = 35-40 g/m<sup>2</sup> (col. 5, lines 7-16, conventional fluff pulp basis weight)

$$\frac{\text{SAP basis weight}}{\text{Fiber basis weight}} = \frac{20 - 100 \text{ g/m}^2}{35 - 40 \text{ g/m}^2} = 0.5 - 2.86,$$

which overlaps the claimed range of 50 wt% or more of the super absorbent polymer.

10. Regarding claim 6, Ito discloses an absorbent article in which the sheet absorbers having multiple layers are provided in the bags (Figs. 4-7, first and second absorbing layers 6 and 7 placed in ends of liquid-impermeable sheet 5).

11. Regarding claims 11 and 12, Ito discloses an absorbent article further including a guide sheet bridging the absorbers provided in each of the two bags (col. 3, lines 24-30, Fig. 10, rayon staple layer 11);

in which the guide sheet allows transfer of a body fluid between the absorbers provided in each of the two bags (Fig. 10, rayon staple layer 11 comprising rayon and extending along second absorbing layer 7, therefore capable of transferring body fluid).

12. Regarding claims 13 and 14, Ito discloses an absorbent article in which the guide sheet extends to cover a part of each of the absorbers (Fig. 10, rayon staple layer 11 covering second absorbing layer 7). Examiner interprets the language "...extends to cover a part or entire lower surface of each of the absorbers..." and "...extends to further cover a part or entire side surface of each of the absorbers..." broadly, to include "...in which the guide sheet extends to cover a part of each of the absorbers."

13. Regarding claim 18, Ito discloses an absorbent article further including a skin contact sheet at least between the two bags of the leak preventer (col. 3, lines 55-61, Figs. 8-10, porous surface sheet 8 between open ends of liquid-impermeable sheet 5);

14. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (US 4364992) in view of Bogdanski; Michael Scott et al. (US 5830202), further in view of Sorebo et al (US. 20030089633).

15. Regarding claim 8, Ito in view of Bogdanski discloses the invention as substantially claimed, see above. However, Ito in view of Bogdanski is silent regarding the area of the sheet where the two bags are not provided as claimed [claim 8]. Sorebo discloses an interlabial pad comprising a bag (¶ [0026], Fig. 1, fluid impervious layer 7), further comprising an area of a package where two bags are not provided occupying

50% or less of an area of the entirety of the package in the leak preventer (Fig. 15, area not covered by pockets 83, 85 substantially less than 50% of area covered by pockets 83, 85 as depicted). Sorebo provides the advantage of providing a minimal area for debris to enter, restricting entry of any contamination. In other words, Sorebo limits the area where contaminants could enter during storage. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ito in view of Bogdanski as discussed with the relative area as taught by Sorebo in order to maintain an absorbent article in a clean state.

16. Claims 9 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (US 4364992) in view of Bogdanski; Michael Scott et al. (US 5830202), further in view of Osborn, III; Thomas Ward (US 5895381).

17. Regarding claims 9 and 34, Ito discloses an absorbent article in which a ratio of an average left-to-right length W to an average front-to-rear length L is approximately 0.75 (col. 6, lines 45-46, sample size of 300 x 400 mm,  $W / L = 300/400 = 0.75$ ).

Therefore, the ratio of Ito does not overlap the claimed ranges of greater than 1.0 or 1.2.

Bogdanski discloses a sample pad having a W / L ratio of approximately 1 (col. 16, lines 35-45, especially lines 41-45, pad trimmed to 30.5 x 30.5cm). However, Bogdanski prepares a pad of this size as a sample, and is silent regarding the average dimensions of an absorbent article prepared for a user. Therefore, both Ito and Bogdanski lack the claimed W / L ratios of greater than 1.0 or 1.2 as claimed [claims 9 and 34].



Osborn discloses an interlabial device (col. 2, lines 39-56, col. 4, lines 9-14, Fig. 1, device 20) comprising a rectangular absorbent pad, optionally comprising impermeable components (col. 5, lines 10-22, Fig. 1, device 20 comprising flexible extensions 24). Device 20 of Osborn overlaps the claimed ratios of greater than about 1.0 or 1.2:

**width** = 2x 50-115 mm = 100-230 mm (col. 7, lines 1-29, especially lines 8-12, width of each extension 24 measuring 50-115 mm);

**length** = 49 mm (col. 5, lines 31-53, especially lines 34-38);

ratio = **width** / **length** = 100-230 mm / 49 mm = **2.04 to 4.69**, overlapping the claimed range of greater than about 1.0 or 1.2.

Osborn places interlabial device 20 at the same position on a wearer's body as Ito, and dimensions the device to absorb all fluids (Osborn, col. 5, lines 23-30, interlabial device 20 placed within interlabial space to intercept all body exudates). Additionally, Osborn emphasizes that the dimensions are important for providing a good fit (col. 5, lines 31-32). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ito and Bogdanski as discussed with the dimension ratios as taught by Osborn in order to fit an interlabial device effectively.

18. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (US 4364992) in view of Bogdanski; Michael Scott et al. (US 5830202), further in view of Raley (US 4846813).

19. Regarding claims 15-17, Ito in view of Bogdanski discloses the invention as substantially claimed, see above. However, Ito in view of Bogdanski lacks a guide sheet as claimed [claims 15-17]. Raley discloses an absorbent article (col. 4, lines 17-31, 35-40, Figs. 1-3) further comprising:

a guide sheet including a concavity-and-convexity-containing sheet member having apertures forming flow paths (col. 5, lines 6-13, col. 6, lines 22-27, Figs. 1-2, topsheet 13 having passages 14);

a guide sheet further including a hydrophilic diffusion sheet laminated under or combined to a lower surface of the concavity-and-convexity-containing sheet member (col. 5, lines 6-13, Figs. 1-2, absorbent / fibrous web 12 bonded to topsheet 13);

a guide sheet further including a body fluid impermeable sheet laminated under or combined to a lower surface of the hydrophilic diffusion sheet (col. 6, lines 32-37, col. 8, lines 20-22, claim 2, Figs. 1-2, backsheet 11 bonded to fibrous web 12).

Raley prevents flow-back of liquids absorbed within an absorbent web (cols. 1-2, lines 15-18, 64-10). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ito in view of Bogdanski as discussed with the guide sheet as taught by Raley in order to prevent flow-back of absorbed liquids.

20. Claims 21, 23, 25 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (US 4364992) in view of Bogdanski; Michael Scott et al. (US 5830202), further in view of Finch et al. (US 5954201).

21. Regarding claims 21, 23 and 25, Ito in view of Bogdanski discloses the invention as substantially claimed, see above. However, Ito in view of Bogdanski lacks a fitting member as claimed [claims 21, 23 and 25]. Finch discloses an absorbent article such as a sanitary napkin (col. 3, lines 26-39, Figs. 1-3, absorbent article 10), further comprising:

a fitting member for fitting an absorbent article to a body surface of a wearer between two bags of a leak preventer (col. 4, lines 28-40, especially lines 28-30, Figs. 1-2, attachment device 50 extending on region between peripheral seal 18 of cover 12);

the fitting member provided under a lower side of a sheet of a leak preventer (Fig. 2, attachment device 50 provided under lower side of cover 12);

in which a front-to-rear length of the fitting member is longer than a front-to-rear length of the leak preventer (Fig. 2, attachment device 50 longer than absorbent 16).

Finch provides the advantage of attaching an absorbent article to a user's undergarment to maintain its position during use. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ito in view of Bogdanski as discussed with the fitting member as taught by Finch in order to maintain an absorbent article in a correct position during use.

22. Regarding claim 31, Ito in view of Bogdanski in view of Finch discloses an absorbent article having the claimed structural elements. Examiner interprets the language "feces-receiving portion" as functional language or intended use, since this limitation adds no structure to the invention. To clarify, the invention of Ito in view of Bogdanski in view of Finch is capable of receiving feces on a portion of the article.

23. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (US 4364992) in view of Bogdanski; Michael Scott et al. (US 5830202) in view of in view of Finch et al. (US 5954201), further in view of Visscher et al.(US 5674214).

24. Regarding claim 22, Ito in view of Bogdanski in view of Finch discloses the invention as substantially claimed, see above. However, Ito, Bogdanski and Finch lack a fitting member provided on an upper side of the sheet of a leak preventer as claimed [claim 22]. Visscher discloses an absorbent article such as a sanitary napkin comprising a leak preventer (col. 2, lines 50-64, col. 5, lines 25-40 especially lines 32-36, Figs. 1, 4 sanitary napkin comprising backsheet 30), further comprising a fitting member provided on an upper side of the sheet of a leak preventer (col. 5, lines 32-36, Figs. 1, 4, spacing structure 44 provided on upper side of backsheet 30). Visscher improves contact between an absorbent article and wearer's body (col. 10, lines 9-30, especially lines 9-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ito, Bogdanski and Finch as discussed with the fitting member as taught by Visscher in order to improve contact with a wearer's body.

***Response to Amendment***

25. Rejections of claims 4-6 and 11-14 under 35 USC § 112 second paragraph applied in the Office Action dated 19 February 2009 are withdrawn in view of the amendments filed 17 November 2008. Applicant has amended claim 1 to recite “the absorbers,” therefore claim 1 positively recites a plurality of absorbers as required by claims 4-6 and 11-14.

***Response to Arguments***

26. Applicant’s arguments, see p. 6-9 filed 19 May 2009 with respect to the rejection(s) of claim(s) 1-6,8,9,11-18,21-23,25 and 31 under 35 USC § 103 over Ito in view of Bogdanski, Sorebo, Raley, Finch and Visscher have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made under 35 USC § 103 over Ito in view of Bogdanski, Sorebo, Raley, Finch, Visscher and Osborn.

27. Applicant asserts that Applicant confirms that claims 1-6, 8, 9, 11-18, 21-23, 25, 31 and 34 continue to read  
on elected Figs. 6B, I IF, 13C, 14B, 15B, 16B and 19C. Applicant reasons that claim 1 is generic to claims 7, 10, 19, 20, 24, 26-30 and 32-33. Examiner notes that the election of species requirement is based on the species lacking a special technical feature that defines a contribution to the art. Examiner interprets the multiple layers in different arrangements of the depicted embodiments as a common technical feature. However,

this feature is anticipated or obvious over Berrigan et al. (US 5256466); therefore this feature does not define a special technical feature.

28. Applicant contends that Bogdanski, Sorebo, Raley, Finch and Visscher fail to overcome the deficiencies of Ito. Specifically, Applicant reasons that Bogdanski lacks two bags that are liquid-impermeable. Applicant notes that liquid urine will move through substrate 7 into the absorbent gelling particles 9 and then the absorbent gelling particles 9 become wet. Examiner cites Ito as teaching a pair of liquid-impermeable bags (Figs. 4-7, openings of liquid-impermeable sheet 5) and Bogdanski as teaching a pair of absorbers within bags (Fig. 12, doubled over sections 14, 14'). In other words, Examiner modifies second absorbing layer 7 of Ito in view of the doubled over sections 14, 14' of Bogdanski.

29. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

30. Applicant submits that Ito and Bogdanski lacks a ratio of an average width W to an average length L of 1.0 (1.2) or more. Examiner cites Osborn as teaching an absorbent article having the claimed ratios in the new grounds of rejection.

***Conclusion***

31. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- ◆ Kannankeril; Charles P. US 4925453
- ◆ Woods; James M. et al. US 5771524
- ◆ Osborn, III; Thomas Ward et al. US 6254584
- ◆ Kramer; Timothy A. et al. US 4578068

32. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Marcetich whose telephone number is 571-272-2590. The examiner can normally be reached on 8:00am to 4:00pm Monday through Friday.

33. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

34. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Adam Marcetich/  
Examiner, Art Unit 3761

/Tatyana Zalukaeva/  
Supervisory Patent Examiner, Art Unit 3761